

1 XAVIER BECERRA
Attorney General of California
2 NICKLAS A. AKERS
Senior Assistant Attorney General
3 STACEY D. SCHESSER
Supervising Deputy Attorney General
4 YEN P. NGUYEN (SBN 239095)
Deputy Attorney General
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
6 Telephone: (415) 510-3497
7 Fax: (415) 703-5480
E-mail: TiTi.Nguyen@doj.ca.gov

[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103]

8 *Attorneys for The People of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SONOMA

11 UNLIMITED JURISDICTION

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**

15 Plaintiff,

16 v.

17 **PREMERA BLUE CROSS,**

18 Defendant.

Case No.

**COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES, AND OTHER EQUITABLE
RELIEF**

(CIVIL CODE, §§ 56.101, 56.10(a); BUS &
PROF. CODE, §§ 17200 et seq., 17500 et
seq.)

22 1. THE PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "Plaintiff"), by
23 and through Xavier Becerra, Attorney General of the State of California, brings this action against
24 Premera Blue Cross ("Premera") for violating Business and Professions Code sections 17200 et
25 seq. ("UCL") and 17500 et seq. ("FAL"), the Confidentiality of Medical Information Act
26 ("CMIA"), and Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L.
27 No. 104-191, 110 Stat. 1938, as amended by the Health Information Technology for Economic
28 and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, as well as the Department of Health

1 and Human Services Regulations, 45 C.F.R. §§ 160 et seq., and alleges the following upon
2 information and belief:

3 **PARTIES**

4 2. Plaintiff is the People of the State of California. Plaintiff brings this action by and
5 through Xavier Becerra, Attorney General. The Attorney General is authorized by Business and
6 Professions Code sections 17204, 17206, and 17207 to bring actions to enforce the Unfair
7 Competition Law, Business and Professions Code sections 17535 and 17536 to bring actions to
8 enforce the False Advertising Law, Civil Code section 56.36(f)(1)(A) to bring actions to enforce
9 the Confidentiality of Medical Information Act, and 42 U.S.C. § 1320d-5(d)(1) to bring actions to
10 enforce the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191,
11 110 Stat. 1936, as amended by the Health Information Technology for Economic and Clinical
12 Health Act, Pub. L. No. 111-5, 123 Stat. 226, as well as the Department of Health and Human
13 Services Regulations, 45 C.F.R. §§ 160 et seq.

14 3. The Defendant Premera Blue Cross is a Washington Non-Profit Corporation with
15 its principal place of business at 7001 220th Street SW, Mountlake Terrace, WA 98043.

16 4. Premera is a “covered entity” and a “business associate” within the meaning of 45
17 C.F.R. § 160.103, and is required to comply with the HIPAA federal standards governing the
18 privacy and security of electronic personal health information (ePHI), including the Privacy and
19 Security Rules. (See 45 C.F.R. § 164.032.)

20 5. In the course of its business, Premera collects, maintains, and/or processes
21 sensitive personal data and health information including personal information, medical
22 information, protected health information (PHI), and electronic personal health information
23 (ePHI) (collectively, “Sensitive Data”).

24 **JURISDICTION AND VENUE**

25 6. Jurisdiction is proper because Premera has transacted business within the State of
26 California, including the County of Sonoma, or has engaged in conduct impacting the State of
27 California or its residents at all times relevant to this complaint. The violations of law described
28 herein occurred in the County of Sonoma and elsewhere in the State of California.

FACTS

1
2 7. On March 17, 2015, Premera publicly announced that it had discovered
3 unauthorized access to its computer network, which exposed the Sensitive Data of nearly eleven
4 (11) million individuals, approximately 418,659 of whom were California residents.

5 8. On or before January 29, 2015, Premera discovered that an unauthorized party (or
6 unauthorized parties) may have gained unauthorized access to Sensitive Data stored on Premera’s
7 computer network for ten months, beginning on or about May 5, 2014 and continuing through
8 March 6, 2015.

9 9. The unauthorized party exploited multiple weaknesses in Premera’s data security,
10 including known cybersecurity risks that Premera failed to appropriately and adequately address.
11 Many of these weaknesses—inadequate safeguards against phishing attempts, inadequate network
12 segmentation, ineffective password management policies, ineffectively configured security tools,
13 and inadequate patch management—had been identified as vulnerabilities in Premera’s network
14 in the years leading up to the breach by Premera’s internal information technology (IT) auditors
15 and third-party cybersecurity assessors.

16 10. Premera’s security failures occurred in spite of state and federal privacy laws that
17 mandate reasonable data security and other safeguards to protect Sensitive Data. For example,
18 CMIA requires Premera to preserve the confidentiality of medical information and provides
19 remedies and penalties for the negligent maintenance or storage of medical information.
20 Similarly, HIPAA sets forth strict rules and standards that require Premera to adequately
21 safeguard and protect patient data from unauthorized access. These include requirements to
22 inventory ePHI, ensure appropriate access privileges to ePHI based on job function, secure
23 physical access to data centers, regularly monitor login attempts, regularly and accurately assess
24 risks to ePHI, update its security program to protect against known cybersecurity threats, and
25 adequately mitigate identified risks.

26 11. Prior to and during the data breach, Premera made representations about how it
27 protects consumer privacy and safeguards sensitive data in its privacy notices: “We take steps to
28 secure our buildings and electronic systems from unauthorized access.”; “We are committed to

1 maintaining the confidentiality of your medical and financial information.”; “We authorize access
2 to your personal information by our employees and business associates only to the extent
3 necessary to conduct our business of serving you, such as paying your claims.” After Premera
4 publicly announced the data breach, the company misrepresented the scope and severity of the
5 data breach to affected consumers and misrepresented the security measures Premera had in place
6 at the time of the breach. For example, Premera provided its call-center agents with a script that
7 stated that “[w]e have no reason to believe that any of your information was accessed or misused”
8 and “[t]here were already significant security measures in place to protect your information.” All
9 of these assertions are contradicted by Premera’s numerous security failures and violations of the
10 CMIA and HIPAA.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATIONS OF THE CONFIDENTIALITY OF MEDICAL INFORMATION ACT**

13 **CIVIL CODE SECTION 56.101**

14 **(Failure to Preserve the Confidentiality of Medical Information)**

15 12. The People reallege and incorporate by reference each of the paragraphs above as
16 though fully set forth herein.

17 13. Premera is a health care service plan within the meaning of Civil Code section
18 56.05, subdivision (g).

19 14. Premera is obligated to preserve the confidentiality of the medical information it
20 creates, maintains, preserves, stores, abandons, destroys, or disposes under Civil Code section
21 56.101, subdivision (a).

22 15. Premera failed to maintain, preserve, and store medical information in a manner
23 that preserves the confidentiality of the information. Premera allowed unauthorized access to
24 medical information without taking adequate steps to protect the information such access.

25 16. Because of Premera’s failures, Premera negligently maintained, preserved, and
26 stored medical information in violation of Civil Code section 56.101, subdivision (a).

27 17. Premera also negligently disclosed medical information in violation of Civil Code
28 section 56.36, subdivision (c)(1).

1 **SECOND CAUSE OF ACTION**

2 **VIOLATIONS OF THE CONFIDENTIALITY OF MEDICAL INFORMATION ACT**

3 **CIVIL CODE SECTION 56.10**

4 **(Unauthorized Disclosure of Medical Information)**

5 18. The People reallege and incorporate by reference each of the paragraphs above as
6 though fully set forth herein.

7 19. Premera is obligated to not disclose medical information regarding an enrollee or
8 subscriber without first obtaining the enrollee's or subscriber's authorization, unless a statutory
9 exception applied, under Civil Code section 56.10, subdivision (a).

10 20. Premera disclosed medical information without first obtaining the enrollee's or
11 subscriber's authorization, and no statutory exception applied. As a result, Premera violated Civil
12 Code section 56.10, subdivision (a).

13 21. Premera also negligently disclosed medical information in violation of Civil Code
14 section 56.36, subdivision (c)(1).

15 **THIRD CAUSE OF ACTION**

16 **VIOLATIONS OF THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY**
17 **ACT (HIPAA) AND ITS ATTENDANT PRIVACY AND SECURITY RULES**

18 **45 C.F.R. SECTION 160 ET SEQ.**

19 22. The People reallege and incorporate by reference each of the paragraphs above as
20 though fully set forth herein.

21 23. At all times relevant, Premera has been a "covered entity" and a "business
22 associate" pursuant to HIPAA, specifically 45 C.F.R. § 160.103.

23 24. At all relevant times, Premera has maintained the ePHI of millions of individuals
24 pursuant to HIPAA, specifically 45 C.F.R. § 160.103.

25 25. As a "covered entity" and a "business associate," Premera is required to comply
26 with the HIPAA standards, safeguards, and implementation that govern the privacy of ePHI,
27 including the Privacy Rule and the Security Rule. (45 C.F.R. Part 164, Subparts A, C, & E.)
28

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

3 **BUSINESS AND PROFESSIONS CODE SECTION 17200**

4 32. The People reallege and incorporate by reference each of the paragraphs above as
5 though fully set forth herein.

6 33. Premera has engaged in unlawful, unfair, or fraudulent acts or practices, which
7 constitutes unfair competition within the meaning of Section 17200 of the Business and
8 Professions Code.

9 34. Specifically, Premera:

10 (a) Violated California Civil Code section 56.101, subdivision (a), as alleged
11 in the First Cause of Action;

12 (b) Violated California Civil Code section 56.10, subdivision (a), as alleged in
13 the Second Cause of Action;

14 (c) Violated HIPAA and its Privacy and Security Rules, as alleged in the Third
15 Cause of Action;

16 (d) Violated Business and Professions Code Section 17500 as alleged in the
17 Fourth Cause of Action;

18 (e) Violated California Civil Code section 1798.82, which requires Premera to,
19 in the most expedient time possible and without unreasonable delay, disclose a breach of the
20 security of its system following discovery of the breach in the security of unencrypted personal
21 information of a resident of California, and to further include mandatory information in a
22 specified format in the disclosure; and

23 (f) Made unfair, deceptive, untrue, and misleading statements regarding the
24 security measures in place at Premera at the time of the breach.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment as follows:

27 1. Pursuant to Business and Professions Code section 17203, that the Court enter all
28 orders necessary to prevent Premera, its successors, agents, representatives, employees, and all

1 persons who act in concert with Premera from engaging in any act or practice that constitutes
2 unfair competition in violation of Business and Professions Code section 17200, including as
3 alleged in this Complaint;

4 2. Pursuant to Business and Professions Code section 17535, that the Court enter all
5 orders necessary to prevent Premera, its successors, agents, representatives, employees, and all
6 persons who act in concert with Premera from making any untrue or misleading statements in
7 violation of Business and Professions Code section 17500, including, but not limited to, as
8 alleged in this Complaint;

9 3. Pursuant to Business and Professions Code section 17206, that the Court assess a
10 civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business and
11 Professions Code section 17200, as proved at trial;

12 4. Pursuant to Business and Professions Code section 17536, that the Court assess a
13 civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business and
14 Professions Code section 17500, as proved at trial;

15 5. Pursuant to Civil Code section 56.36, subdivision (c)(1), that the Court assess a
16 civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Civil Code
17 sections 56.101 and 56.10, subdivision (a), as proved at trial;

18 6. Pursuant to 42 U.S.C. § 1320d-5(d)(1), that the Court assess a civil penalty of
19 \$100, not to exceed \$25,000 per calendar year, for each violation of the Health Insurance
20 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1938, as amended by
21 the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5,
22 123 Stat. 226, as well as the Department of Health and Human Services Regulations, 45 C.F.R.
23 §§ 160 et seq.

24 7. That Plaintiff recovers its cost of suit herein, including costs of investigation; and

25 8. For such other and further relief as the Court deems just and proper.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 11, 2019

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
NICKLAS A. AKERS
Senior Assistant Attorney General
STACEY D. SCHESSER
Supervising Deputy Attorney General



YEN P. NGUYEN
Deputy Attorney General
*Attorneys for
Privacy Enforcement*